Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	MM Docket 92-266
Rate Regulation	

COMMENTS OF
LIBERTY CABLE COMPANY, INC.

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SUMMARY

Liberty's Comments focus on two issues: a geographically uniform rate structure and the definition of effective competition. With regard to uniform rates, Liberty believes that the uniform rate requirement of the Cable Act applies to all rates -- basic tier and otherwise -- benefits both consumers and cable competitors, and is independent of state authority and the existence of effective competition.

Liberty's experience in competing with Time Warner's cable operations in New York City demonstrates that non-uniform pricing is a very serious problem for cable competitors; these comments report on two examples of Time Warner's non-uniform pricing practices in the New York City market. Liberty also reports on its experience with New York regulators demonstrating the necessity of having a federal remedy in this area.

Liberty agrees with the FCC's tentative conclusion that the best reading of the Cable Act is one which finds that, for purposes of the Uniform Rate Requirement, the geographic area contemplated by the Act is the contiguous area served by a cable system. Liberty would add to this reading the concept of affiliated companies so that a "geographic area" would be those contiguous areas served by affiliated cable companies. Affiliation would be determined by the Commission's broadcast attribution rules.

The Commission should adopt procedures specifically to prevent and discourage evasion of the Uniform Rate Requirement. Such procedures should permit an interested party to challenge a rate or

service category, with the burden of clear and convincing proof on the cable operator to justify the rate or service category. Any interested party should be able to bring a private cause of action in a Federal Court to compel compliance with the Uniform Rate Requirement and to obtain damages from any cable operator who fails to observe this requirement.

With regard to the issue of what constitutes effective competition, Liberty agrees with the tentative conclusion that, under the Cable Act's second test of the existence of effective competition, penetration should be measured cumulatively. Such a cumulative measurement would permit the 15% penetration level to be met if multichannel video programming distributors ("MVPDs"), other than the franchised cable operator, together served 15% of the households in a franchise area.

On the other hand, Liberty does not agree with the Commission's tentative view of the second test that comparable video programming exists simply because a competitor offers multiple channels of video programming and the numerical tests for the offering of, and subscription to, competitive service under the second test are met. Liberty is of the firm belief that comparable video programming can exist only when cable competitors have an opportunity to obtain the same programming as the cable operator at the same price and on the same terms and conditions as the cable operator.

Liberty incorporates herein its comments filed in the Commission's rulemaking addressing broadcast signal carriage issues

with regard to the definition of MVPD. Liberty believes SMATV systems should be included within the definition of MVPD for purposes of the second and third tests for determining the existence of competition under the Act.

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Implementation of Cable Television Consumer Protection Act and Competition Act of 1992	)	MM Docket 92-266
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Liberty Cable Company, Inc. ("Liberty"), submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding implementing the rate regulation portions of the Cable Act of 1992 (the "Notice").

INTRODUCTION

1. Liberty is a satellite master antenna television ("SMATV") operator in New York City which currently serves approximately 7,000 subscribers at dozens of sites in the New York City metropolitan area. Liberty has built the largest 18 GHz network in the United States and is a pioneer in the use of 18 GHz microwave equipment to redistribute its signal to subscriber locations. Liberty will also be among the first video programmers in the U.S. to test "video dialtone" service and technology, beginning in 1993. To the best of Liberty's knowledge, Liberty is the only SMATV company in the country that is successfully overbuilding and competing head-to-head with a local franchised

cable company. Liberty's franchised competitor in New York City is Time Warner Entertainment Company, L.P. ("Time Warner"), which does business in Manhattan through Time Warner Cable New York and Paragon Cable Manhattan, and in the outer boroughs of New York City through B-Q Cable, QUICS and Staten Island Cable.

2. All of Liberty's subscribers are in multifamily complexes -- cooperative, condominiums and apartment buildings. All the buildings which subscribed to Liberty's service after February, 1992, had cable service prior to subscribing to Liberty's service.

3. Liberty's Comments deal with two issues raised in the Notice: Geographically Uniform Rate Structure (Notice: paras. 111-115) and what constitutes "effective competition" (Notice: paras. 6-9).

I. GEOGRAPHICALLY UNIFORM RATE STRUCTURE.

A. Section 623(d) Applies To All Rates, Benefits Both Consumers And Cable Competitors, And Is Independent Of State Authority And Existence Of Effective Competition.

4. The Cable Television Consumer Protection and Competition Act of 1992[1/] ("the Act") provides that "[a] cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system."[2/] This requirement for uniform cable rates is intended, among other things, to "prevent cable operators from dropping the rates in one portion of a franchise

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[1/]Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[2/]Act § 623(d), 47 U.S.C. § 543(d).

area to undercut a competitor temporarily."[3/] Thus, Section 623(d) is intended by Congress to be of benefit not only to cable subscribers, but also to competitors and potential competitors of a cable operator and that cable operator's affiliates serving a contiguous geographic area.

5. Section 3 of the Act is entitled, "Regulation of Rates," and consists of two major parts: Part (a), which is entitled, "Amendment," and contains the text of new Section 623 of the Communications Act; and, Part (b), which is entitled, "Effective Date." Part (a) consists of 11 major parts, paragraphs (a) - (k), which deal with the following subjects: (a) "Competition Preference; Local and Federal Regulation"; (b) "Establishment of Basic Service Tier Rate Regulations"; (c) "Regulation of Unreasonable Rates"; (d) "Uniform Rate Structure Required"; (e) "Discrimination: Services For The Hearing Impaired;" (f) "Negative Option Billing Prohibited"; (g) "Collection of Information"; (h) "Prevention of Evasions"; (i) "Small Systems Burdens"; (j) "Rate Regulation Agreements"; (k) "Reports on Average Prices."

6. Section 623(d) is not a subsection of Section 623(a), (b) or (c) and Section 623(d) stands independent of Sections 623(a), (b) and (c). Sections 623(a) and (b) deal exclusively with the regulation of the reasonableness of basic tier rates; the sections establish various criteria to determine whether basic tier rates

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[3/]H.R. Conf. Rep. No. 102-862, 102d Cong., 2d Sess., at 59, 65 (1992) ("Conference Report"); Senate Committee On Commerce, Science and Transportation, Sen. Rep. No. 102-92, 102d Cong., 2d Sess. 76 (1992) ("Senate Report").

are to be regulated by the states or the Federal Government. Section 623(c) deals with all other rates which are to be regulated by the Federal Government.

7. Section 623(d) deals with the uniformity of all rates -- be they in the basic tier or not. The Commission acknowledges this fact by placing discussion of Section 623(d) in the Notice in that part of the Notice entitled, "Provisions Applicable to Cable Services Generally." Like the other parts of Section 623 discussed in this part of the Notice, the authority and responsibility to enforce Section 623(d) rests with the Federal Government. These parts of Section 623 are not to be administered by the states nor does the Federal Government's ability to enforce Section 623(d) depend on the existence of effective competition. The Commission has an obligation to both consumers and competitors of cable operators to adopt regulations implementing Section 623(d) for all rates. This obligation is not shared with the states and has nothing to do with existence of "effective competition" as defined in Section 623(a).

B. Non-Uniform Pricing Is A Very Serious Problem For Cable Competitors.

8. The Act's Uniform Rate Requirement attempts to remedy what is a pervasive and serious problem for multichannel video programming providers who attempt to compete with cable. Liberty encounters almost daily instances of non-uniform pricing practices by Time Warner instituted precisely to disadvantage Liberty and to discourage competition.

9. For example, Time Warner recently established discriminatory bulk rates for multi-family dwellings with fifteen or more units in the Borough of Manhattan. Time Warner has offered no economic[4/] or social justification for these bulk rates, applied on a discriminatory basis so as to discourage subscriptions to Liberty's service.[5/]

10. Time Warner has, thus far, offered these bulk rates exclusively to multi-unit dwellings with which Liberty is currently discussing conversion from Time Warner's service to Liberty's service. It is not known whether Time Warner will offer the new bulk rate to any other multi-unit dwellings. Moreover, Time Warner has only introduced the bulk rates in the Borough of Manhattan, the area in which almost all of Liberty's customers are located. Time Warner has not introduced bulk rates in less wealthy boroughs where such rates would be most appreciated and, perhaps, socially justified. This practice is further evidence that Time Warner's

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[4/]Tenants must continue to deal directly with Time Warner for service tiers, other than the basic tier. Therefore, there is no cost savings to Time Warner in dealing exclusively with the building operator, which would justify bulk rates.

[5/]A building owner or operator enters into a long-term agreement to purchase one of Time Warner's basic tiers at a bulk rate, which is 75% of the normal rate for those tiers. However, building operators need not pass this savings on to the building's occupants. Since the building operator charges all occupants for Time Warner's service, whether they want it or receive it, the occupants have no incentive to subscribe to a Time Warner competitor. The arrangement is attractive to building operators because the building operator can charge occupants 100% of the normal rate while being charged by Time Warner only 75% of the normal rate. The 25% difference can be pocketed by the building operator.

bulk rates are intended to apply on a non-uniform basis only in areas where Liberty currently has customers and potential customers.

11. Another example of non-uniform rates implemented by Time Warner is found in Time Warner's rate practices for hotels. Time Warner has dropped its rates for only certain hotels which, as with the case of the bulk rates described above, happened to be negotiating with Liberty to convert from Time Warner's service to Liberty's service. No other hotels are included in this rate reduction, nor is the rate reduction generally advertised or known. Time Warner has been offering varying, discounted rates on an ad hoc basis to hotels with which Liberty is negotiating to provide service. The Time Warner discount is offered based solely upon what Liberty offers to charge the hotel. Each time that Liberty offers the hotel a lower rate, Time Warner counteroffers with a new rate which is lower than what was last offered by Liberty to the hotel. This bidding continues; the hotel purchasing agents have stated to Liberty that Time Warner has told these agents that Time Warner will give the agents whatever it takes to ensure the hotels do not subscribe to Liberty and commit to Time Warner on a contractual basis. This practice by Time Warner of continuously negotiating downward for each property as Liberty nears contract is pervasive and consistent.[6/]

[6/]Liberty is further disadvantaged in competing with Time Warner because many of the programs which Liberty carries for hotels are purchased from Time Warner affiliated programmers. These (continued...)

12. Liberty is not suggesting that consumers pay more than the lowest possible price for video services. Liberty has based its entire business philosophy on the premise of providing consumers the lowest possible price for video services. However, like the Congress, Liberty is of the firm belief that selective, temporary rate cuts whose goal is thwarting potential competition are not in the best long-term interests of consumers. Therefore, Liberty strongly endorses the Commission's proposal to adopt rules providing that cable systems must have a uniform rate structure throughout the geographic area served by the cable system.[7/]

13. Furthermore, Liberty is not adverse to the FCC's tentative conclusion that "the statutory requirement of a geographically uniform structure does not prohibit establishment of reasonable categories of service with separate rates and terms and conditions of service" or "reasonable discriminations in rate levels among different categories of customers, provided that the rate structure containing such discriminations is uniform throughout a cable system's geographic service area."[8/] This view

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[6/](...continued)
programmers routinely charge Time Warner less for this programming than they charge Liberty. Time Warner squeezes Liberty's margins both when Liberty purchases programming and when Liberty sells programming. One of Liberty's salespersons was advised that one of the hotels Liberty attempted to sign as a subscriber was paying Time Warner $6.70 per room for a line-up of 36 channels which is approximately half of Liberty's cost for the same programming.

[7/]Notice at para. 112.

[8/]Id.

of Section 623(d) is reasonable and consistent with Liberty's experience as a cable competitor.

14. In translating these tentative conclusions into rules, Liberty encourages the Commission to premise its regulations on the model provided by Section 202(a) of the Communications Act -- common carrier rules and case law in the area of unreasonable or unjustified rate and service discrimination. Liberty counsels the Commission that no need exists for the Commission to "reinvent the wheel" in an area replete with precedent. While Liberty recognizes this body of precedent is not a perfect model because cable operators are not being regulated as common carriers, Liberty believes this body of precedent provides the Commission with an excellent group of principles which can serve as the Commission's premise for regulations concerning differing rates for differing customer and service categories in the cable television area.

15. The major concern that Congress was attempting to address through Section 623(d) (and Liberty's major concern) is that cable operators be precluded from the short-term use of non-uniform rates to kill competition. Regulations which promote this goal are consistent with Congressional interest as manifested in Section 623(d).

C. Federal Remedy Required.

16. Despite the anticompetitive nature of Time Warner's bulk rates, the rates were approved by the New York City Department of Telecommunications and Energy ("DTE"). Notwithstanding DTE's approval, Liberty has requested that the New York State Commission

on Cable Television hold a hearing on the lawfulness of the bulk rates. Attached hereto as Exhibits 1 and 2 are Liberty's petition to the New York State Commission and a similar petition to the New York State Commission by John L. Hanks, formerly Director for Cable Franchises for New York City.

17. It is noteworthy to observe that DTE has filed a Reply in Opposition To Liberty's Request For A Hearing. In its pleading, DTE takes the position that Time Warner's new bulk rates are fine and the New York Commission on Cable Television ought not conduct a hearing on the matter. That a franchisor supports the position of its fee-paying franchisee should not surprise anyone. It is noted here in response to the Commission's request for comment on the need for specific Federal anti-discrimination rules[9/] and to emphasize Congressional wisdom in providing a Federal Uniform Rate Requirement.[10/]

[9/]Notice at para. 117.

[10/]Even when cable operators get authorization from their franchisors for rate increases, the cable operators do not always comply with what the franchisor has authorized. For example, with regard to the bulk rates described above, Time Warner asked for, and received, authority to institute bulk rates for certain customers for certain services. Other than those customers and services, all other existing charges were to remain unchanged. One such charge was for additional television sets. Nevertheless, as can be seen from Time Warner's October 10,1992 letter to DTE, attached hereto as Exhibit 3, containing the terms of the bulk sales (see specifically Exhibit B and para. I of Exhibit D attached to this October 10 letter) and Page 2 of DTE's November 18, 1992 letter to Time Warner confirming those terms, attached hereto as Exhibit 4, Time Warner is offering to hook up additional sets at no charge in direct violation of what Time Warner asked for and what DTE authorized.

D. The FCC Should Require That Rates Be Uniform Within Any Contiguous Area Served By Affiliated Entities.

18. The Commission seeks comment on the meaning of the term "geographic area" used in the Act in connection with uniform rates.[11/] The Commission recognizes that cable operators often operate systems which encompass more than one franchise area.[12/] Liberty concurs with the FCC that the most logical FCC reading of the Act is one which concludes that the geographic area contemplated by the Act is the contiguous area served by a cable system. Liberty would add to this reading the concept of affiliated companies so that a "geographic area" would be those contiguous areas served by affiliated cable companies. A cable operator could evade the uniformity requirement by incorporating an affiliate and claiming it need not have uniform rates across a contiguous area because this area is not served by the same company. For example, absent such a definition, Time Warner could claim that Manhattan Cable's rates for hotels need not be uniform with B-Q Cable's rates for hotels in Queens because, notwithstanding that Manhattan and Queens are contiguous areas, they are served by different companies and, therefore, these companies need not charge the same rates for the same category of customer. Whether companies are affiliated should be determined by the Commission's broadcast attribution rules.

[11/] Notice, para. 114.

[12/] Id.

19. Such a requirement will also assist would-be cable competitors get started. Since such start-up efforts are often limited in their geographic scope, a well-established cable operator could focus its cost-cutting on the area where it faces start-up competition and cross-subsidize its losses with revenues from other contiguous areas served by an affiliate where its revenues have not been reduced.

E. To Prevent And Discourage Evasion Of The Uniform Rate Requirement, The FCC Should Adopt Procedures Whereby Any Interested Party May Challenge A Rate Or Service Category, With The Burden Of Proof On The Cable Operator To Justify The Rate Or Service Category.

20. As Liberty can attest to first-hand, it is crucial that the Commission establish simple, expedient, effective procedures for enforcing the Uniform Rate Requirement. Litigation, as the initial or only remedy, is far too cumbersome, lengthy and costly to adequately serve as an effective enforcement mechanism. The Notice does not ask for comment on an enforcement mechanism specifically for Section 623 (d). Nevertheless, Liberty addresses the issue because, without procedures to prevent evasion of the Uniform Rate Requirement, cable competitors and consumers may be without any forum to address their grievances.

21. Moreover, without a Federal remedy, there may be no remedy since local forums are more sympathetic to the cable operators which provide the forum with franchise fees. As described above and in Exhibit 4 hereto, DTE recently approved anticompetitive bulk rates proposed by Time Warner without any economic or social justification, in secret, and without any public

notice or opportunity for comment. It is crucial that the Federal Communications Commission provide procedures to address this type of situation.

22. Liberty recommends that the Commission adopt procedures permitting any interested party, including consumers and cable competitors, to initiate an enforcement proceeding by filing a complaint with the Commission challenging: (i) any cable rate or service category approved or authorized by a franchisor or other state authority; and (ii) any anticompetitive practice involving non-uniform rates or service by a cable operator approved or authorized by a franchisor or other state authority. Any challenged rate, service or practice should be presumed by the Commission to be unreasonably discriminatory with the burden upon the cable operator to justify the rate, service or practice. Within a reasonable amount of time thereafter, the Commission should determine whether the rate, service or practice is unjust or unreasonably discriminatory. If the Commission finds that it is unjust or unreasonably discriminatory, the Commission should order the cable operator to immediately cease offering the rate or service, or cease the practice.

23. The Commission should not involve itself in a determination of damages suffered by the consumer or competitor since the Commission does not have the resources to do so. A Commission determination that a rate or practice (regardless of state authorization or approval) is unjust or unreasonably discriminatory would document that a violation of the statutory

provision requiring a uniform rate structure had occurred. With such a finding by the Commission, a cable competitor would have the right to pursue damages and attorneys fees in U.S. District Court. Accordingly, pursuant to the four-part test set forth in Cort v. Ash, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed. 26 (1975), the Commission should find that an aggrieved competitor has a federal private cause of action in court to pursue a claim for damages for violation of the statutory provision. See Centel Cable Television Co. of Florida v. Admirals Cove Associates, 835 F.2d 1359 (11th Cir. 1988) (recognizing a private cause of action to enforce Section 621 of the Communications Act). A federal administrative agency can, in its regulations, implement and further define a federal private cause of action. Long v. Trans World Airlines, 913 F.2d 1262, 1266-67 (7th Cir. 1990); Angelastro v. Prudential-Bache Securities, Inc., 764 F.2d 939, 947-48 (3rd Cir.), cert. denied, 474 U.S. 935 (1985); Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 536 (9th Cir. 1984). Such a procedure would provide a powerful deterrent to cable operators who abuse their competitors by means of predatory, non-uniform rates, while at the same time conserving FCC resources.

II. DEFINITION OF EFFECTIVE COMPETITION.

A. Introduction

24. The Act permits regulation of cable rates only if the Commission finds that a cable system is "not subject to effective

competition."[13/] The Act establishes three separate tests to determine whether a cable system is subject to effective competition: (1) fewer than 30 percent of the households in a franchise area subscribe to cable; (2) the franchise area is served by at least two unaffiliated multichannel video programming distributors, each of which offers comparable video programming to at least 50 percent of the households in the franchise area, and the number of households subscribing to programming service offered by multichannel video programming distributors other than the largest distributor exceeds 15 percent of the households in the franchise area; or (3) the franchising authority in the franchise area is a multichannel video programming distributor and offers service to at least 50 percent of the households in the franchise area.

25. Liberty herein responds to the Commission's request for comment on whether, under the second test, one should measure penetration cumulatively; i.e., by adding the subscribers of all alternative distributors (other than the largest) together, even though, individually, each competitor might not meet the figure.[14/] Liberty also responds to the Commission's request for comment on what is "comparable video programming" under the second test,[15/] and, on what services qualify as "a multichannel video

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[13/]Act, Sections 623(b)(2)(C), 623(c)(2).

[14/]Notice, para. 9.

[15/]Id.

programming distributor" ("MVPD")[16/] for purposes of the 2nd and 3rd tests.

B. Penetration Level.

26. Liberty agrees with the Commission's tentative view that, under the second test, penetration should be measured cumulatively so that the 15% penetration level could be met if MVPDs, other than the franchised cable operator, together served 15% of the households in a franchise area. Liberty believes that such a cumulative penetration level would be sufficient to assure the cable operator would not be able to fix rates that were predatory or otherwise anticompetitive. Moreover, at a 15% penetration level, Liberty believes market forces would be sufficient to assure cable operators would not be able to extract monopoly rents from consumers. The statute does not require this penetration level to have been achieved exclusively by one cable competitor before regulation is unnecessary. If that was what Congress intended, it would have been easy to say so explicitly. Effective competition to cable systems can exist if more than one competitor exists and those competitors together have 15% of the market. That being the case, it is logical to assume that a cumulative measure of penetration is sufficient to satisfy Congressional mandates in this regard.

[16/]Notice, para. 9.

C. Comparable Video Programming.

27. With respect to "comparable video programming," under the second statutory test for effective competition, Liberty does not agree with the Commission's proposed rebuttable presumption that comparability exists simply because a competitor offers multiple channels of video programming and the numerical tests for the offering of, and subscription to, competitive service under the second test are met. Liberty believes the term "comparable video programming" means qualitatively comparable programming and not simply comparable numbers of channels of video programming. Comparable in the context of the Act is a qualitative term, not a quantitative term. Congress wanted to assure that cable competitors' programming was qualitatively comparable to the cable operators' before Congress was willing to find the existence of effective competition sufficient to forestall regulation.[17/] Had Congress intended this provision to be a quantitative measure, it would have been easy to insert the word "numerically" before the word "comparable."

28. Liberty believes comparability exists under the term "comparable video programming" when cable competitors have the same opportunity to obtain the same programming as the cable operator and to obtain that programming under the same terms and conditions

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[17/] See, H.R. Rep. No. 628, 102d Cong., 2d Sess. at pp. 110-111; S. Rep. No. 92, 102d Cong. 1st Secs. at pp. 24-29, reprinted in 1992 U.S. Code Cong. & Admin. News 1133.

as the cable operator.[18/] Such an interpretation is certainly more consistent with Congressional concerns and goals expressed in Section 19 of the Act than is the Commission's interpretation. The Commission can rely on competitors to cable operators to bring to the Commission's attention situations in which competitors do not have an opportunity to obtain the same programming as the cable operator. The Commission should presume that such comparability exists where the numerical tests for the offering of and subscription to competitive service under the second test are met until a competitor files a complaint with the Commission to the contrary. At such time, the Commission should presume that such comparability does not exist, which presumption can be rebutted only by the cable operator's clear and convincing proof to the contrary.[19/]

D. Multichannel Video Programming Services.

29. As to what types of video distribution entities should be included within the term MVPD for purposes of the second and third tests, Liberty is of the firm belief that satellite master antenna

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[18/]That cable companies refuse to permit competitors even the opportunity to provide comparable programming is incontestible. Evidence of Liberty's experience in this arena is provided in great detail in the affidavit of Peter O. Price, Liberty's President. Liberty is certain that other cable competitors have had similar experiences attempting to obtain programming. This affidavit is attached hereto as Exhibit 5, and was initially filed in the case of Turner v. FCC currently pending in the United States District Court For The District of Columbia.

[19/]See, Southwestern Bell Telephone Co. v City of San Antonio, Tex., D.C. Tex, 4 F. Supp. 570,573; McDonnell v. General News Bureau,C.C.A.Pa.,93 F.2d 898,901.

systems ("SMATV systems") should be included. In the Commission's rulemaking addressing broadcast signal carriage issues raised by the Act, the Commission asked if the term MVPD encompasses SMATV systems. Liberty filed comments in that proceeding and refers the Commission to its comments in that proceeding on this subject.

WHEREFORE, Liberty Cable Company, Inc., respectfully requests the Commission to adopt rules in this proceeding consistent with the views expressed herein.

Respectfully submitted,

LIBERTY CABLE COMPANY, INC.

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ATTORNEYS FOR LIBERTY CABLE
COMPANY, INC.

Dated: January 27,1993

EXHIBIT 1

NEW YORK STATE COMMISSION
ON CABLE TELEVISION

IN THE MATTER OF PETITION FOR DECLARATORY RULING ON THE INSTITUTION OF SELECTED BULK RATES BY TIME WARNER CABLE OF NEW YORK CITY AND PARAGON CABLE MANHATTAN	:	**PETITION**
	:	Docket No.

Petitioner, Liberty Cable Company, Inc. ("Liberty"), by its attorney, W. James MacNaughton, respectfully state as follows:

1. Liberty is a satellite master antenna television ("SMATV") company doing business in New York City. Liberty is a licensee of the Federal Communications Commission and provides its cable television service to the residents of multifamily buildings on a per subscriber and "bulk" rate basis. The bulk rate is a fee charged to the owner or manager of the building for the delivery of Liberty's cable television service to every resident of the building who chooses to receive Liberty's service. Annexed hereto as Exhibit A is a true copy of Liberty's program offering and price structure.

2. Liberty competes in New York City with various cable companies owned and managed by Time Warner Entertainment Company, L.P. ("Time Warner"). Those companies are Time Warner Cable of New York City (formerly Manhattan Cable Television) in Manhattan, Paragon Cable in Manhattan, and QUICS in the Bronx and BQ Cable in Queens.